

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAMES TRESI, dba TRESI-
LEON CONTRACTING,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos 77-82 and 77-83

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of two, \$250 civil penalties for dust emissions allegedly in violation of respondent's Sections 9.03(b) and 9 15(b) of Regulation I came on for hearing before the Pollution Control Hearings Board, Chris Smith and Dave J. Mooney, convened at Seattle, Washington on October 3, 1977. Hearing examiner William A. Harrison presided Respondent elected a formal hearing

Appellant appeared by and through its attorney R. Drake Bozarth. Respondent appeared by and through its attorney Keith D. McGoffin. Olympia court reporter Gene Barker provided court reporting services.

1 Witnesses were sworn and testified Exhibits were examined
2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260 has filed with this Hearings
7 Board a certified copy of its Regulation I containing respondent's
8 regulations and amendments thereto Official notice thereof is hereby
9 taken

10 II

11 Respondent contends that appellant violated Section 9.03(b) of
12 Regulation I on April 25, 1977, and that appellant violated Section 9.15(b)
13 on April 28, 1977 The first of these standards, Section 9.03(b), focus
14 solely on the opacity of a dust emission regardless of the precautions
15 taken. The second of these standards, Section 9.15(b), focuses on whether
16 reasonable precautions were taken to prevent airborne dust, regardless of
17 opacity

18 III

19 On April 25, 1977, appellant caused a cloud of dust while renovating
20 the Old Public Safety Building in Seattle, Washington. At its densest
21 point the dust was of 100% opacity and continued at that opacity for at
22 least six consecutive minutes. This dust was observed by respondent's
23 inspector who issued a Notice of Violation to appellant's employee on the
24 job site Respondent's inspector instructed appellant's employee on the
25 use of precautions to prevent dust emissions in demolition work. A Notice
26 and Order of Civil Penalty, No 3302, assessing the penalty of \$250

27 FINAL FINDINGS OF FACT,
 CONCLUSIONS OF LAW AND ORDER

1 was subsequently served upon appellant.

2 IV

3 On April 28, 1977 appellant caused a cloud of dust while renovating
4 the same building, although a different portion of it. Appellant did not
5 take the precaution, in this instance, of using hoses, chutes or tarps
6 in the dumping area to allay the dust caused by dropping demolition
7 material ten feet into a dumpster. Respondent's inspector observed the
8 dust, and issued a Notice of Violation to appellant's employees on the
9 site. A Notice and Order of Civil Penalty, No. 3307, assessing the
10 penalty of \$250 dollars was subsequently served upon appellant.

11 Appellant appeals these civil penalties.

12 V

13 Appellant is an experienced sandblasting contractor although this
14 is its first interior demolition project. Appellant has no prior violation
15 of respondent's Regulation I.

16 VI

17 Any Conclusion of Law hereinafter recited which should be deemed a
18 Finding of Fact is hereby adopted as such.

19 From these Findings the Pollution Control Hearings Board comes to
20 these

21 CONCLUSIONS OF LAW

22 I

23 Section 9.03(b) of respondent's Regulation I states

24 "After July 1, 1975, it shall be unlawful for any person
25 to cause or allow the emission of any air contaminant for
26 a period or periods aggregating more than three (3) minutes
in any one hour, which is

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

(1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines, or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b)(1), provided that, 9.03(b)(2) shall not apply to fuel burning equipment utilizing wood residue when the particulate emission from such equipment is not greater than 0.05 grain per standard cubic foot.

Dust is an "air contaminant". Section 1.07(b) of Regulation I and RCW 70.94.030(1). By causing an emission of dust of an opacity obscuring an observer's view to a degree equal to or greater than does smoke designated as No. 1 on the Ringelmann Chart for a duration of more than three (3) minutes in any one hour, appellant has violated Section 9.03(b) of respondent's Regulation I.

Appellant contends that the dust in question does not comport with the definition of "air pollution" appearing at Section 1.07(c) of respondent's Regulation I. Inasmuch as the operative term in Section 9.03 above, is "air contaminant" and not "air pollution", the resolution of that question is unnecessary to the resolution of this appeal.

II

Section 9.15(b) of respondent's Regulation I states:

It shall be unlawful for any person to cause or permit a building or its appurtenances or a road to be constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne

Airborne dust is "particulate matter" in that it is solid at standard conditions. Section 1.07(v) of Regulation I.

Respondent proved a prima facie violation by showing that airborne dust, from a building alteration being conducted by appellant, could be seen. From that a legitimate inference can be made that "reasonable

precautions" were not taken. The burden of proceeding or going forward with the evidence, at that point, is upon appellant, to prove that it had taken "reasonable precautions" to prevent dust from becoming airborne. Weyerhaeuser Co. v. PSAPCA, PCHB No. 1076 (1977) and Kaiser Aluminum Co. v PSAPCA, PCHB No. 1079 and 1085 (1977) Appellant failed to carry that burden in this appeal, since it offered no evidence that it had taken any precautions in the dumping area (such as use of water hoses, chute or tarps) to prevent airborne dust Appellant therefore violated Section 15(b) of respondent's Regulation I.

III

In view of appellant's commendable record of no prior violations, the maximum civil penalty of \$250 is not justified for the events of April 25, 1977, in view of this first violation, however, the civil penalty assessed for the violation of April 28, 1977 is reasonable.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Pollution Control Hearings Board makes this

ORDER

The \$250 civil penalty pertaining to April 25, 1977 (No. 3302) is affirmed, provided however, that \$125 of the civil penalty is suspended on condition appellant not violate respondent's Regulations for a period of one year after this ORDER becomes final.

The \$250 civil penalty pertaining to April 28, 1977 (No. 3307) is affirmed absolutely

1 DONE at Lacey, Washington this 18^d day of October, 1977.

2 POLLUTION CONTROL HEARINGS BOARD

3 Chris Smith
4 CHRIS SMITH, Member

5 Dave J. Mooney
6 DAVE J. MOONEY, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER